

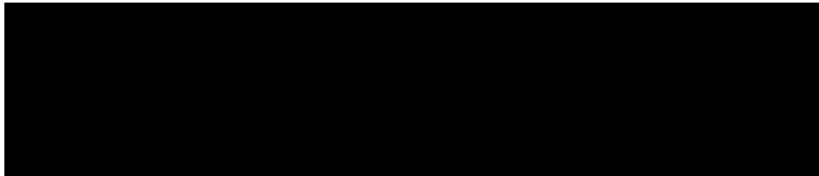
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAY 11 2011**

Office: VERMONT SERVICE CENTER

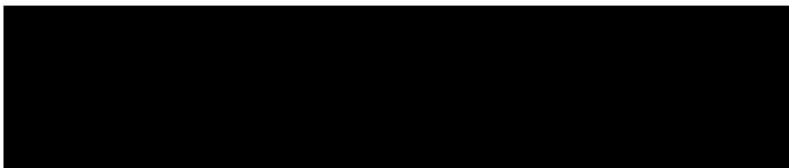
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a business information technology consulting company, states that it is subsidiary of the beneficiary's foreign employer, [REDACTED]. The petitioner has employed the beneficiary in L-1A status since April 2006 and seeks to extend his status for two additional years so that he may continue to serve in the position of Business Relationship Manager.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the beneficiary supervises, directly and indirectly, a total of 191 professional employees who relieve him from performing non-managerial tasks, and is responsible for managing a client account that generates over \$12 million annually. The petitioner contends that the proffered position fulfills all requirements for a position in a managerial capacity as set forth in the statute and regulations.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The sole issue in this matter is whether the petitioner established that the beneficiary has been employed by the foreign entity in a primarily managerial capacity. The petitioner does not claim that the beneficiary will be employed in an executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The petitioner filed the nonimmigrant petition on December 19, 2008. In a letter dated December 15, 2008, the petitioner stated that the beneficiary was admitted to the United States in L-1A status under the company's Blanket L petition in April 2006 to serve as a senior program manager for a group of client projects. The petitioner indicated that, in 2007, the beneficiary assumed his current position of business relationship manager for the petitioner's client, The Nielsen Company, based at the client's worksite in Florida. The petitioner provided a lengthy description of the position. Briefly, the petitioner stated that the beneficiary meets with senior client executives to maintain and develop the petitioner's relationship with the clients, develops new business opportunities, attends meetings of senior management to formulate strategies, and manages ongoing development projects within the client's portfolio. The petitioner indicated that the beneficiary holds the discretionary authority to prepare cost and revenue budgets for all projects within the Nielsen account, and the authority to assess and control staffing needs for such projects. The petitioner stated

that the beneficiary supervises six project managers, who in turn supervise over 185 professional engineers and technology consultants, and a total of approximately 50 projects. Finally, the petitioner indicated that the beneficiary has the ultimate authority for all decisions regarding hiring and firing of associates assigned to Nielsen projects.

The petitioner submitted an organizational chart identifying the structure outlined in the petitioner's letter. The chart shows that the beneficiary reports to the position of [REDACTED] who in turn reports to the [REDACTED]

On January 6, 2009, the director issued a request for additional evidence (RFE). The director instructed the petitioner to provide additional information regarding the beneficiary's duties, and the management and personnel structure of the U.S. entity, including information regarding the number of subordinate supervisors working under the beneficiary's management, their job titles and job duties, the amount of time the beneficiary devotes to managerial duties versus non-managerial duties, and the degree of discretionary authority the beneficiary has over day-to-day operations. The director also observed that the petitioning company has filed a number of L-1A petitions which have been approved by USCIS, but questioned whether "a company the size and scope identified in the instant petition could reasonably support that many managers."

In a response dated February 17, 2009, the petitioner emphasized that the company employs more than 130,300 people worldwide and has a significant presence in the United States requiring it to deploy a significant number of managers to oversee wide-scale engagements with corporate clients.

The petitioner stated that the beneficiary "is a manager operating at a senior level within our organizational hierarchy whose primary function is to manage, not to perform technical or administrative duties." The petitioner submitted the requested detailed description of the beneficiary's duties, including the percentage of time the beneficiary would devote to each area of responsibility. Briefly, the duties were described under the following headings:

- Prepare business growth strategies – 10%
- Supervise project managers and direct projects – 15%
- Plan project manpower – 10%
- Appraise employee performance – 8%
- Overall responsibility for personnel actions – 10%
- Recommend team member trainings – 8%
- Respond to Requests for Proposal and prepare proposals based on the new requirements – 7%
- Attend relationship level review meetings and planning sessions – 10%
- Control and monitor project and program level risks – 10%
- Plan and manage client visits; Attend Conferences and Exhibitions and Conduct Team Building Events – 5%
- Overall responsibility for financial planning – 7%.

The petitioner reiterated that the beneficiary directly supervises six subordinate project managers who each manage multiple projects and supervise a total of 185 subordinate professional employees who are responsible for carrying out the day-to-day tasks required for the provision of services to the client. The petitioner provided a position description for each project manager who reports to the beneficiary. The petitioner indicated that the beneficiary will spend approximately 90 percent of his time on managerial duties and will "maintain the authority to hire and fire his team members, conduct performance appraisals of direct subordinates, reward employees based on performance, approve vacation leave of subordinates, approve or reject claims submitted by teams for various project and personal expenses incurred," and "relocate team members to various projects based on specific project requirements and associated skill sets." Finally, the petitioner stated that the beneficiary will approve cost and revenue budgets of the projects he oversees.

The director denied the petition on March 9, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial capacity. The director observed that the proffered position appears to contain some managerial components, but determined that the petitioner did not establish that the beneficiary would be primarily engaged in managerial duties. The director determined that the petitioner's response to the request for evidence included only a "generalized breakdown" of the beneficiary's activities, and failed to include position descriptions for the beneficiary's team members.

The director emphasized that, in order to establish the beneficiary's eligibility as a manager, the petitioner must demonstrate that he primarily manages the organization, or a department, subdivision, function or component of the organization. The director noted that the activities associated with managing a client project can be distinguished from controlling a function or component of the organization. In this regard, the director noted that "a Business Relationship Manager for IT workers often performs the day-to-day tasks which support the workers he coordinates." Finally, the director noted that the beneficiary will "manage a team that works on a specific client project, engaging in activities directly associated with producing a product or providing a service."

On appeal, the petitioner asserts that the beneficiary's responsibilities are managerial in nature because he manages an important client account that generated over \$12 million in revenues in 2008, supervises and controls the work of supervisory and professional employees, has the authority to hire and fire personnel, and exercises discretion over the day-to-day operations of the many client projects that are performed under his supervision.

The petitioner objects to the director's finding that the petitioner failed to provide a sufficiently detailed breakdown of the beneficiary's duties. The petitioner nevertheless provides a breakdown of the number of hours per week the beneficiary devotes to his various duties. The petitioner also provides copies of Statements of Work for projects undertaken by the petitioner for [REDACTED] and evidence of wages paid to the beneficiary's six subordinate project managers. Finally, the petitioner objects to the director's assessment that the beneficiary is encumbered with the daily operations of providing services to the client, or merely supporting the employees providing such services. Counsel emphasizes that the beneficiary supervises 191 professional employees and has the authority to exercise discretion over the day-to-day operations of the projects carried out by the petitioner at the client's site.

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity. The director's determination appears to be based in part on the director's pre-conceived impression of what duties are typically performed by project managers or business relationship managers for IT workers rather than on the evidence submitted by the petitioner. The director should not hold a petitioner to his undefined and unsupported view of the standard duties of an occupation in making a determination as to whether the beneficiary will be employed in a primarily managerial or executive capacity. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding.

Upon review, the AAO finds that the evidence submitted establishes that the beneficiary supervises and controls the work of professional employees and possesses authority to recommend personnel actions for employees under his supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

Furthermore, the AAO concurs with the petitioner's assertion that the beneficiary's overall management of a large group of on-site/off-shore projects for a single client, within the context of the facts presented in this matter, can be equated to managing a subdivision, function or component of the organization. *See* section 101(a)(44)(A)(i) of the Act. The client account for which the beneficiary is responsible generates significant revenue. Further, the beneficiary does not directly oversee such projects, but rather oversees subordinate project managers, who, in turn, supervise the technical resources. Finally, the AAO is satisfied that the beneficiary exercises discretion over the day-to-day operations of projects under his responsibility, as required by section 101(a)(44)(A)(iv) of the Act.

While the beneficiary will undoubtedly be required to apply his technical expertise in carrying out his job duties, the AAO is persuaded that the vast majority of the day-to-day non-managerial tasks required to produce the products and provide services for the client are carried out by the beneficiary's subordinate project managers and technical staff. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. Accordingly, the director's decision dated March 9, 2009 is withdrawn.

ORDER: The appeal is sustained.